

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Nicholas Bongiovanni	Team: Squad #2	CCRB Case #: 201402243	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 03/05/2014 3:10 AM	Location of Incident: 10th Avenue and West 13th Street, and at the 6th and 7th Precinct stationhouse	Precinct: 06	18 Mo. SOL 9/5/2015	EO SOL 9/5/2015	
Date/Time CV Reported Fri, 03/07/2014 3:28 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 03/07/2014 3:28 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Daniel Omahoney	01637	950980	006 PCT
2. POM Jonathan Re	10902	920746	006 PCT
3. SGT Michael Alfieri	00800	942938	006 PCT
4. An officer			Unknown

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM William Morris	16924	952037	006 PCT
2. POM Richard Rainero	30940	937325	006 PCT
3. POM Demetrios Kola	07439	938784	006 PCT
4. POM Zeke Buttermark	01765	933665	006 PCT
5. SGT Gregory Faljean	04998	930122	007 PCT
6. SGT Walter Butler	00379	927991	007 PCT
7. LT Stephen Spataro	00000	939513	007 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Daniel Omahoney	Abuse: At 10th Avenue and West 13th Street in Manhattan, PO Daniel Omahoney searched § 87(2)(b)	
B.POM Daniel Omahoney	Force: At 10th Avenue and West 13th Street in Manhattan, PO Daniel Omahoney used pepper spray against § 87(2)(b)	
C.POM Jonathan Re	Force: At 10th Avenue and West 13th Street in Manhattan, PO Jonathan Re used physical force against § 87(2)(b)	
D.POM Daniel Omahoney	Force: At 10th Avenue and West 13th Street in Manhattan, PO Daniel Omahoney used physical force against § 87(2)(b)	
E.POM Daniel Omahoney	Discourtesy: At 10th Avenue and West 13th Street in Manhattan, PO Daniel Omahoney spoke rudely to § 87(2)(b)	
F.POM Jonathan Re	Force: At 10th Avenue and West 13th Street in Manhattan, PO Jonathan Re used a chokehold against § 87(2)(b)	
G.POM Jonathan Re	Force: At 10th Avenue and West 13th Street in Manhattan, PO Jonathan Re restricted the breathing of § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
H.POM Jonathan Re	Abuse: At 10th Avenue and West 13th Street in Manhattan, PO Jonathan Re damaged § 87(2)(b)'s property.	
I.POM Daniel Omahoney	Force: Inside of the 7th Precinct stationhouse, PO Daniel Omahoney used physical force against § 87(2)(b)	
J.SGT Michael Alfieri	Abuse: At the 7th Precinct stationhouse, Sgt. Michael Alfieri strip-searched § 87(2)(b)	
K. An officer	Force: Inside of the 7th Precinct stationhouse, an officer used physical force against § 87(2)(b)	

Case Summary

On March 7, 2014, § 87(2)(b) called the CCRB to report the following incident (encl. 3A-3B). § 87(2)(b) did not witness the incident. There is no video footage of the incident. On March 5, 2014, at approximately 3:10 a.m., § 87(2)(b) was driving his car with his friend, § 87(2)(b) in the vicinity of 10th Avenue and West 13th Street in Manhattan. PO Daniel Omahoney and PO Jonathan Re, of the 6th Precinct, pulled over § 87(2)(b) for driving while intoxicated. PO Re escorted § 87(2)(b) out of his car and to the sidewalk. PO Omahoney opened the front passenger door of § 87(2)(b)'s car and removed § 87(2)(b) from the car. PO Omahoney allegedly frisked § 87(2)(b)'s arms, legs and torso, and then allegedly searched § 87(2)(b)'s pants' pockets (**Allegation A**). PO Omahoney escorted § 87(2)(b) next to § 87(2)(b) on the sidewalk where he and § 87(2)(b) both sat down. PO Omahoney recovered a pipe with marijuana residue from inside of § 87(2)(b)'s car. PO Omahoney allegedly searched the glove compartment, a drawer near the dashboard, underneath the seats and a jacket on the backseat of § 87(2)(b)'s car. At some point while attempting to put § 87(2)(b) under arrest, PO Omahoney allegedly grabbed his arms and tried to turn him around. PO Omahoney pepper sprayed § 87(2)(b) (**Allegation B**). § 87(2)(b) left the scene without pursuit from either PO Omahoney or PO Re.

PO Re and PO Omahoney grabbed § 87(2)(b) by his arms and allegedly his legs, and pushed him to the ground (**Allegations C and D**). PO Re allegedly kicked § 87(2)(b) in his left arm. PO Omahoney allegedly told § 87(2)(b) "Shut the fuck up" (**Allegation E**). PO Omahoney allegedly punched § 87(2)(b) multiple times in the ribs (**Allegation D**). PO Re allegedly grabbed § 87(2)(b) by his neck and his breathing was allegedly restricted (**Allegations F and G**). Either PO Omahoney or PO Re handcuffed § 87(2)(b). PO Re allegedly "stomped" on § 87(2)(b)'s glasses that were on the ground, causing the frames to brake and scratches to the lens (**Allegation H**). Sgt. Michael Alfieri responded to the arrest location. § 87(2)(b) was pushed inside the police car where he allegedly hit his head on the door on the opposite side. An officer took possession of § 87(2)(b)'s car when he was transported to the 7th Precinct stationhouse. Inside of the 7th Precinct stationhouse, PO Omahoney allegedly pushed § 87(2)(b) from behind (**Allegation I**). Inside of the 7th Precinct stationhouse, Sgt. Alfieri conducted a strip-search of § 87(2)(b) (**Allegation J**). PO Omahoney and an unidentified officer allegedly pushed § 87(2)(b)'s arms inside the 7th Precinct stationhouse (**Allegations I and K**). § 87(2)(b) was then transported to the 6th Precinct stationhouse for processing and then transported to New York Presbyterian Hospital (See Medical Records).

Mediation, Civil and Criminal Histories

§ 87(2)(b) was arrested during the incident and therefore the complaint is not eligible for mediation. A request for any Notice of Claim filed by § 87(2)(b) was sent to the Comptroller's Office on December 28, 2014, and any findings will be added to the case file upon receipt (encl. 39A). § 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by either § 87(2)(b) or § 87(2)(b) (encl. 2A-2B).
- Sgt. Michael Alfieri has been a member of the NYPD for seven years, has had eight previous CCRB allegations involving four cases. Sgt. Alfieri has a total of two substantiated CCRB allegations, one for a vehicle search and one for a search of person. Sgt. Alfieri received instructions as a result of his substantiated allegations (encl. 1A).

- PO Jonathan Re has been a member of the NYPD for 17 years, has had nine previous CCRB allegations involving five cases with no substantiated allegations (encl. 1B-1C).
- PO Daniel Omahoney has been a member of the NYPD for three years, has had six previous CCRB allegations involving three cases with no substantiated allegations (encl. 1D).

Potential Issues

Between April 2, 2014 and April 14, 2014, four telephone call attempts were made to § 87(2)(b). At the conclusion of each call, the investigator left voicemail messages asking to be called back regarding the incident. On April 2, 2014 and April 14, 2014, please call letters were mailed to § 87(2)(b). On April 22, 2014, § 87(2)(b) called the investigator and left a voicemail message stating that he received the voicemail messages and asking to be called back at the same number. On April 24, 2014, the undersigned placed the fifth telephone call attempt to § 87(2)(b) and left a voicemail message asking to be called back regarding the incident. As of the date of this report, § 87(2)(b) has not contacted the CCRB again.

Between September 8, 2014 and September 26, 2014, four telephone call attempts were placed to § 87(2)(b) to ask follow-up questions regarding the incident. At the conclusion of each of the four calls, voicemail messages were left asking § 87(2)(b) to call back. As of the date of this report, § 87(2)(b) has not contacted the CCRB. On September 23, 2014 and September 26, 2014, calls were made to § 87(2)(b) in order to reach § 87(2)(b). For each of the two call attempts, the phone continued to ring and voicemail messages were not able to be recorded.

Findings and Recommendations

Allegations Not Pleaded

- **Vehicle stop:** § 87(2)(b) admitted that he was driving while under the influence and was arrested.
- **Vehicle search and seizure:** § 87(2)(b)'s car was searched and seized incident to his lawful arrest.
- **Threat of force:** § 87(2)(b) alleged that an unidentified officer entered his cell and “turned on” his taser but § 87(2)(b) could not be reached for elaboration.

Recommendations

Allegation A- Abuse of Authority: At 10th Avenue and West 13th Street in Manhattan, PO Daniel Omahoney searched § 87(2)(b)

Allegation B- Force: At 10th Avenue and West 13th Street in Manhattan, PO Daniel Omahoney used pepper spray against § 87(2)(b)

As discussed above, § 87(2)(b) could not be reached by the CCRB and did not provide a sworn statement. § 87(2)(g)

Allegation C- Force: At 10th Avenue and West 13th Street in Manhattan, PO Jonathan Re used physical force against § 87(2)(b)

Allegation D- Force: At 10th Avenue and West 13th Street in Manhattan, PO Daniel Omahoney used physical force against § 87(2)(b)

It is undisputed that § 87(2)(b) was intoxicated during the incident. It is undisputed that PO Omahoney told § 87(2)(b) that he was under arrest, and PO Re and PO Omahoney grabbed § 87(2)(b)'s arms and brought him chest-down on the ground. § 87(2)(b) admitted to keeping his arms stiff and to his sides while PO Omahoney and PO Re attempted to handcuff him (CCRB

Statements encl. 5A-5G). § 87(2)(b) alleged that PO Re kicked him in his left arm. § 87(2)(b) admitted to screaming, “Help me,” as he shifted his body from side to side. § 87(2)(b) alleged that PO Omahoney punched him multiple times in his right ribs. § 87(2)(b) alleged that when he was escorted to the police car, an officer, whom he did not see, pushed him by his handcuffs and back, inside the police car.

PO Re stated that he told § 87(2)(b) that he was under arrest and to put his hands behind his back, and § 87(2)(b) did not comply (encl. 7C-7E). PO Re stated that he made said commands to § 87(2)(b) three to four times. PO Re stated that when he attempted to grab § 87(2)(b)'s hands, § 87(2)(b) pulled them away from him, and pushed PO Re's hands. PO Re denied ever kicking § 87(2)(b). PO Omahoney did not observe PO Re kick § 87(2)(b).

PO Omahoney stated that he tried to pull § 87(2)(b)'s arms out from underneath his body but was unsuccessful (encl. 6A-6D). PO Omahoney admitted that he attempted to punch § 87(2)(b) one time but did not know if or where he hit him. PO Re did not observe PO Omahoney punch § 87(2)(b). Both PO Omahoney and PO William Morris stated that § 87(2)(b) attempted to run away after he was handcuffed and had to be grabbed but did not know where he was grabbed (encl. 8E-8G).

PO Omahoney stated that he along with other officers escorted § 87(2)(b) inside the police car. PO Omahoney stated that he ordered § 87(2)(b) more than five times to stop resisting and get inside the police car. PO Omahoney stated that § 87(2)(b) attempted to kick or spit on officers when he was being escorted to the police car by PO Omahoney, PO Kola and other officers. PO Omahoney stated that officers had to push down on § 87(2)(b)'s shoulders to get him low enough to enter the police car but did not recall which officers did so. PO Omahoney did not recall whether he did so. PO Re stated that while PO Omahoney, and officers identified via investigation as PO Kola and PO Buttermark attempted to escort § 87(2)(b) inside the police car, § 87(2)(b) pushed back with his body, attempted to turn his body away from the police car, and put his foot up on the side of the police car to avoid getting inside. PO Re stated that he did not assist in escorting § 87(2)(b) inside the police car. PO Morris stated that § 87(2)(b) resisted getting inside the police car but did not recall how. Sgt. Alfieri stated that § 87(2)(b) refused to put his feet inside the police car (encl. 10D-10F).

NYPD Patrol Guide Procedure 203-11 states that an officer may use the “amount of force necessary to overcome resistance to effect an arrest” (encl. i-ii).

§ 87(2)(b), § 87(2)(g)

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Allegation E- Discourtesy: At 10th Avenue and West 13th Street in Manhattan, PO Daniel Omahoney spoke rudely to § 87(2)(b)

§ 87(2)(b) alleged that PO Omahoney told him, “Shut the fuck up.” § 87(2)(b) could not be reached for a sworn statement but would not have been present for this allegation.

PO Omahoney denied ever telling § 87(2)(b) “Shut the fuck up” or using the word, “Fuck” in any comment. PO Re did not hear PO Omahoney telling § 87(2)(b) “Shut the fuck up,” or using the word, “Fuck” in any comment. No other officers were present for this allegation.

§ 87(2)(g)

Allegation F- Force: At 10th Avenue and West 13th Street in Manhattan, PO Jonathan Re used a chokehold against § 87(2)(b)

Allegation G- Force: At 10th Avenue and West 13th Street in Manhattan, PO Jonathan Re restricted the breathing of § 87(2)(b)

§ 87(2)(b) alleged that PO Re grabbed him by his neck, causing his breathing to be restricted for ten seconds as he attempted to scream for help. § 87(2)(b) stated that PO Re only released his grasp after he was no longer able to speak. § 87(2)(b) could not be reached for a sworn statement but would not have been present for this allegation.

PO Re denied grabbing § 87(2)(b)'s neck. PO Omahoney did not observe PO Re grabbing § 87(2)(b)'s neck. No other officers were present for this allegation.

§ 87(2)(g)

Allegation H- Abuse of Authority: At 10th Avenue and West 13th Street in Manhattan, PO Jonathan Re damaged § 87(2)(b)'s property.

§ 87(2)(b) alleged that after he was handcuffed, PO Re “stomped” on his glasses that were on the ground, causing the frames to brake and scratches to the lens. § 87(2)(b) could not be reached for a sworn statement but would not have been present for this allegation.

PO Re stated that he first observed § 87(2)(b)'s glasses when they were on the ground after § 87(2)(b) was placed in handcuffs. PO Re stated that the frames were scraped and the lenses were scratched. PO Re denied ever putting his foot on the glasses. PO Re did not observe how the glasses were damaged. PO Omahoney stated that he observed § 87(2)(b) wearing glasses upon stopping his vehicle. PO Omahoney did not mention the initial condition of the glasses. PO Omahoney stated that he then observed § 87(2)(b)'s damaged glasses on the ground after he was handcuffed. PO Omahoney believed that the glasses were damaged while trying to handcuff § 87(2)(b) but did not observe how they were damaged. PO Omahoney did not observe PO Re stepping on § 87(2)(b)'s glasses.

§ 87(2)(g)

Allegation I- Force: Inside of the 7th Precinct stationhouse, PO Daniel Omahoney used physical force against § 87(2)(b)

§ 87(2)(b) alleged that PO Omahoney pushed him from behind inside of the 7th Precinct stationhouse. § 87(2)(b) alleged that PO Omahoney later pushed him by his arms inside of the 7th Precinct stationhouse. § 87(2)(b) could not be reached for a sworn statement but would not have been present for this allegation.

PO Omahoney denied ever pushing § 87(2)(b) inside of a stationhouse. Neither Sgt. Alfieri nor PO Re observed PO Omahoney or any other officer pushing § 87(2)(b) inside of a stationhouse. No other officers that were interviewed recalled observing § 87(2)(b) inside of a stationhouse.

§ 87(2)(g)

Allegation J- Abuse of Authority: Inside of the 7th Precinct stationhouse, Sgt. Michael Alfieri strip-searched § 87(2)(b)

§ 87(2)(b) admitted that inside his car, he had cocaine and a pipe with marijuana residue. It is undisputed that § 87(2)(b) was strip-searched inside of a bathroom inside of the 7th Precinct stationhouse.

PO Omahoney stated that he frisked § 87(2)(b)'s entire body excluding his genital area and searched § 87(2)(b)'s pockets before he entered the police car, and no contraband was found. § 87(2)(b) was transported to the 7th Precinct stationhouse by PO Kola and PO Buttermark. Once inside the stationhouse with § 87(2)(b) PO Omahoney observed PO Kola enter the stationhouse holding two bags of cocaine. PO Omahoney stated that PO Kola informed him that the bags of cocaine were found in the backseat of the police car that was used to transport § 87(2)(b). PO Kola stated that he searched the police car for any contraband at the arrest location before § 87(2)(b) was placed inside the police car, and that no contraband was found (encl. 12D-12E). PO Kola stated that once § 87(2)(b) was escorted out of the police car, he searched the backseat of the police car where he found two glassine envelopes containing white powder. PO Omahoney stated that after he informed Sgt. Alfieri of the contraband found in the police car, he authorized the strip-search of § 87(2)(b). Sgt. Alfieri acknowledged that it was his decision to strip-search § 87(2)(b) but did not recall any details of why or how § 87(2)(b) was strip-searched.

NYPD Patrol Guide Procedure 208-05 states, "A strip search may only be conducted when the arresting officer reasonably suspects that weapons, contraband or evidence may be concealed upon the person or in the clothing in such a manner that they may not be discovered by the previous search methods" (encl. iii-v).

§ 87(2)(b), § 87(2)(g)

Allegation K- Force: Inside of the 7th Precinct stationhouse, an officer used physical force against § 87(2)(b)

§ 87(2)(b) alleged that an officer pushed him by his arms inside of the 7th Precinct stationhouse. § 87(2)(b) admitted that he was not focused during the incident and was not able to provide a physical description for this officer. § 87(2)(b) could not be reached for a sworn statement but would not have been present for this allegation.

No officer interviewed admitted to pushing § 87(2)(b) inside of a stationhouse. PO Omahoney, Sgt. Alfieri and PO Re each did not observe any officer pushing § 87(2)(b) inside of a stationhouse. No other officers that were interviewed recalled observing § 87(2)(b) inside of a stationhouse.

§ 87(2)(b), § 87(2)(g)

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Pod: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date